

RESERVED
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 149 of 2019

Tuesday, this the 26th day of March, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex No. 15672936H Signalman Kundan Kumar
S/o Sri Nand Kumar,
Village – Tanra, Post – Mohiuddin Nagar
District – Samastipur (Bihar)

..... Applicant

Ld. Counsel for the Applicant : **Shri R. Chandra,**
Advocate

Versus

1. Union of India, through, the Secretary,
Ministry of Defence,
Government of India, New Delhi – 110011.
2. Chief of the Army Staff,
Integrated Headquarters of Ministry of Defence (Army),
DHQ Post Office, New Delhi-110011.
3. The Officer In-charge,
Signal Records, Jabalpur (M.P.)
4. PCDA (Pension), Draupadi Ghat,
Allahabad – 211014 (UP)

..... Respondents

Ld. Counsel for the Respondents : **Shri D.K. Pandey,**
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(i) The Hon’ble Tribunal may be pleased to set aside the PPO dated 08/11/2011 (Annexure No A-1) and a fresh PPO for disability pension w.e.f. 01/11/2008 be issued. Further order dated 22/09/2016 (Annexure No A-2) be set aside.*
- (ii) The Hon’ble Tribunal may be pleased to grant disability pension w.e.f. 01/11/2008 including interest on arrear at the rate of 12%.*
- (iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”*

2. In brief, the facts necessary for the purpose of this O.A. are that the applicant was enrolled in the Army on 21.02.2002. He was discharged on compassionate grounds on the basis of his application for voluntary discharge. On 18.06.2008, Release Medical Board was held. As per Release Medical Board, the disability **CNS (INV) GENERALISED TONIC CLONIC SEIZURE (SOLITARY SEIZURE)** of the applicant was assessed @ 20% for life, but it was accepted as constitutional disease, hence NANA. On 31.10.2008, the applicant was discharged from service without any service pension and disability pension. In December 2010, the applicant filed O.A.No.261 of 2010 before this Hon’ble Tribunal, wherein he has prayed for his reinstatement in service and also for grant of disability pension. On 24.12.2010 on admission stage, the Tribunal directed the applicant to file an appeal against the rejection order of disability pension during the pendency of the case. On 28.12.2010, the applicant filed an appeal against the rejection order of disability pension. On 12.07.2011,

counsel for the respondents informed the Hon'ble Court that disability pension @20% has been granted on the basis of appeal filed by the applicant. Accordingly, the O.A. was dismissed on 28.07.2011 as infructuous and the letter of Army Headquarters dated 01.07.2011, whereby the disability pension was sanctioned, was produced before the Hon'ble Tribunal. In pursuance thereof, PPO dated 08.11.2011 was issued in favour of the applicant, whereby only the disability element was sanctioned. Admittedly, the claim of the applicant is that the Army Authorities had sanctioned the disability pension in favour of the applicant and disability pension consists of two elements, i.e. disability element and service element.

3. The definition of the "disability pension", as mentioned in the PCDA reads as follows :

"Where an Armed Forces Personnel is invalided out of service, which is accepted as attributable to or aggravated by military service, he shall be entitled to disability pension consisting of Service Element & Disability Element as follows:-

1. *Service Element*

The amount of service element shall be determined as 50% of less emoluments drawn as given in para 6 of MOD letter dt- 12.11.2008 which is subject to minimum Rs 3500/- p.m.

2. *Disability Element*

The rates of disability elements for 100% disability for various ranks shall be 30% of emolument last drawn subject to Rs. 3510/- per month. Disability lower than 100% shall be computed by reducing proportionately"

4. A plain reading of the aforesaid definition shows that the disability pension consists of disability element and service element. In the order whereby the competent authority had passed an order in favour of the applicant, the applicant was sanctioned disability pension. However, PCDA (P), Allahabad has refused to give service element to the applicant on the ground that the applicant was not having the requisite qualifying service to earn service pension. We do not find any substance in the submission of the

learned counsel for the respondents and are surprised by the way of this whole case has been handled by the respondents.

5. This is a case where the disability of the applicant has been conceded as 'Aggravated' by the Appellate Committee on First Appeal (ACFA) Vide Adjutant Generals letter dated 01st July 2011. Thus, once the disability of the applicant has been conceded as 'Aggravated' by the respondents, he automatically becomes eligible for disability pension. The disability pension consists of two elements i.e. service element and disability element. Thus, it is not clear as to how and why the PCDA (P), Allahabad had decided to grant only service element to the applicant. We have also noted with concern that all the relevant submissions by the respondents carried in the affidavits talks of grant of disability pension to the applicant and all the relevant orders of this Tribunal providing relief to the applicant are directing release of disability pension, hence release of only disability element of pension to the applicant and denial of service element of pension amounts to miscarriage of justice and shows PCDA (P), Allahabad in poor light.

6. In view of the above the Original Application deserves to be allowed.

7. Accordingly, the O.A. is **allowed**. The impugned orders passed by the respondents is set aside. The respondents are directed to grant service element of the disability pension to the applicant alongwith disability element. The applicant shall be entitled to the arrears of the service element from the same date he is entitled to disability element i.e. 01.11.2008. The respondents are directed to ensure compliance of this order within a period of four months from the date of receipt of a copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

8. No order as to costs.

Let a copy of this order be given to the learned counsel for the respondents free of cost for onward transmission to ensure compliance.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: March, 2019

PKG